

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 07-26E
Z.C. CASE NO. 07-26E
O Street Roadside, LLC
(Minor Modifications to the Approved PUD at Square 398, Lots 829 and 830)
May 13, 2013

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (“Commission”) was held on May 13, 2013. At the meeting, the Commission approved an application from O Street Roadside, LLC for modifications to an approved planned unit development (“PUD”) for property identified as Lots 829 and 830 in Square 398, located in the Shaw neighborhood of Northwest Washington, pursuant to Chapter 1 and 24 of the District of Columbia Zoning Regulations (“Modification Application”). The Commission determined that the Modification Application was properly before it under the provisions of §§ 2409.9 and 3030 of the Zoning Regulations.

FINDINGS OF FACT

1. By Z.C. Order No. 07-26, the Commission approved a consolidated PUD and related zoning map amendment from the C-2-A Zone District to the C-3-C Zone District for the property. The property includes the area bounded by 7th, 9th, O, and P Streets, N.W. The approved PUD authorized construction of a mixed-use development that includes affordable residential units for rent to senior citizens, homeownership and rental residential units, and a hotel with 210 rooms (or additional residential units in the space reserved for the hotel use). The project also includes retail and services uses including a 65,000-square-foot grocery store, 10,000 square feet of additional retail space, and an 8,000-square-foot restaurant. The existing historic O Street Market will be rehabilitated and incorporated into the new grocery store. The project will have an overall floor area ratio (“FAR”) of 5.15 and a total gross floor area of approximately 770,780 square feet. The only party to the case other than the Applicant was Advisory Neighborhood Commission (“ANC”) 2C, the ANC within which the property is located. Z.C. Order No. 07-26 became effective upon its publication in the *D.C. Register* on July 18, 2008.
2. By Z.C. Order No. 07-26A, the Commission approved a two-year extension of the validity of the PUD, making the PUD and map amendment valid until July 18, 2012, within which time an application must be filed for a building permit, and requiring construction to commence no later than July 18, 2013. Z.C. Order No. 07-26A became effective upon its publication in the *D.C. Register* on August 27, 2010.

3. By Z.C. Order No. 07-26B, the Commission approved modifications to the PUD to change the rooftop configuration and certain other aspects of the approved façades. Z.C. Order No. 07-26B became effective upon its publication in the *D.C. Register* on August 27, 2010.
4. By Z.C. Order No. 07-26C, the Commission approved a modification to eliminate 80 parking spaces proposed to be located in the vaults in public space. Z.C. Order No. 07-27C became effective upon its publication in the *DC Register* on August 5, 2011.
5. By Z.C. Order No. 07-26D, the Commission approved a modification to allow for a change in certain vendors and beneficiaries of two of the public benefits being provided. The first change modified Condition No. 8 of Z.C. Order No. 07-26 to allow Emmaus to run its own shuttles instead of relying on the Peapod delivery service. The second change modified the Condition No. 9a of Z.C. Order No. 07-26 to allow the Applicant to change the vendor providing clean and safe services between K and Florida and 7th and 9th Streets from the Columbia Heights/Shaw Family Support Collaborative Green Team (“Green Team”) to the Career Path DC’s Clean Team.
6. By letter dated April 9, 2013, the Applicant requested that the Commission modify the PUD to change two of the required public benefits. The Commission considered the letter at its April 29, 2013 public meeting, noted that the letter contained conflicting statements regarding one of the requested changes, and requested that the Applicant clarify its request. The Applicant provided the clarification by letter submitted on April 30, 2013. Copies of both letters were served on ANC 6E¹, and on the Office of Planning (“OP”).
7. The first proposed change would modify Condition No. 9e of Z.C. Order No. 07-26. As presently written, the condition requires that the Applicant contribute \$5,000 to Shaw Together to sponsor special community events. The Applicant is seeking to modify that condition to allow the Applicant to contribute \$5,000 to Bread for the City, a Shaw-based nonprofit that provides a program for feeding senior citizens. Shaw Together is no longer an active entity in the Shaw neighborhood. The change will allow the Applicant to move the \$5,000 contribution to an active and respected nonprofit entity in Shaw.
8. The second proposed change would modify Condition No. 9f of Z.C. Order No. 07-26. As presently written, the condition requires that the Applicant provide a total of \$10,000 to fund scholarships to four residents of the Shaw neighborhood (\$2,500 each) to attend the University of the District of Columbia Certified Addiction Counselor Program with the scholarship recipients to be selected by the East Central Civic Association (“ECCA”). ECCA now prefers to directly receive the \$10,000 to purchase laptops, projector,

¹ ANC 6E is the successor in interest to ANC 2C as a result of ANC boundary redistricting.

software, and computer training. ECCA would use these purchases to provide community programming that could include substance abuse certification programs.

9. The modification requests are intended to reflect current conditions that were not anticipated at the time of approval. In all other respects, including height, gross floor area, number of units, yards, courts, parking, and loading, the PUD will remain as approved by the Commission.
10. OP submitted a report dated April 18, 2013, recommending approval of the modification requests. Because of the ambiguity in the Applicant's April 9th letter, the OP report describes the modification requested to Condition No. 9f differently than what was ultimately requested by the Applicant.
11. Pursuant to 11 DCMR § 3030.11, the Director of the Office of Zoning placed the request for modifications on the Commission's consent calendar for its public meeting on May 13, 2013. At that meeting, the Commission voted to approve the requested modifications to Z.C. Order No. 07-26.
12. There was no opposition to the modification requests. ANC 6E did not submit a report.

CONCLUSIONS OF LAW

Upon consideration of the record in this case, the Commission concludes that the proposed modifications are consistent with its intent in approving Z.C. Case No. 07-26. The requested modifications do not affect the essential elements of the Commission's approval, but only change the recipient of funds to be used for a feeding program and allow a second contribution to be used for a somewhat different, but equally valuable purpose.

The Commission further concludes that its decision is in the best interest of the District of Columbia and is consistent with the intent and purpose of the Zoning Regulations and Zoning Act.

The approval of these modifications is not inconsistent with the Comprehensive Plan.

The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990, (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2001)) to give great weight to OP recommendations. Although the report used the same flawed statement of the proposed modifications originally used by the Applicant, it is clear that OP understood the actual nature of the two modifications sought. Therefore, the Commission concurs with OP's recommendation to approve the requested modifications.

The modifications are of such a minor nature that consideration as a consent calendar item without public hearing is appropriate.

DECISION

In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of this application for modification of an approved PUD. Conditions No. 9e and 9f of Order No. 07-26A are hereby amended to read as follows:

9. Prior to issuance of any Certificate of Occupancy for the PUD project, the Applicant shall:

...

- e. Contribute \$5,000 to Bread to the City for a feeding program for older clients;
- f. Contribute \$10,000 to ECCA to purchase laptops, projector, software, and computer training for ECCA to provide community programming that could include substance abuse certification programs; and

...

On May 13, 2013, upon the motion of Chairman Hood, as seconded by Vice Chairman Cohen, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to adopt).

In accordance with the provisions of 11 DCMR § 3028.9, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on August 30, 2013.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING